

1 organization filing a petition to deny? It seems kind
2 of strange. I mean, your take on what was going on
3 back then?

4 A There was an awful lot of animosity and
5 resentment and hostility at the station. In fact,
6 going back to one of your earlier questions, another
7 thing that Enrique Palacios said would be one of the
8 things I'd be working on at the station would be to
9 heal the station, because the anger and the hostility
10 and the volatility was very palpable. I hate to put
11 it in these terms, but it seemed like a playground
12 without a recess monitor.

13 Things like -- I can remember one of the
14 first examples of what is going on here is we had a
15 fund drive coming up. One of the announcers, the folk
16 program host had secured or somehow had some CDs that
17 she thought were hers. Bill needed them to put away
18 or to set aside as an incentive for when you call in
19 and pledge your dollars, you get the CD. Bill had a
20 plan to use the CDs as an incentive at a particular
21 time of day when they were best needed. She thought
22 that they were her CDs. Bill locked them in a filing
23 cabinet.

24 Here I am in my office, underneath the
25 basketball hoop, with the two of them like little kids

1 yelling at each other, like Bill locked my CDs. No,
2 they're my CDs for the station. I thought --

3 Q You couldn't run away fast enough.

4 A It took me about 16 months. So you asked?

5 Q About the petition to deny.

6 A About the petition. Why they would do that?
7 I think they were angry and they didn't like me. They
8 didn't like the state of how the station was enmeshed
9 and governed by the superintendent's office and the
10 board of education because they had their own ideas of
11 how the station should be run, really different
12 approaches. I think the group and myself wanted the
13 station to go in the same direction, which is to --
14 because one of the things I was hopeful of when I
15 started at the station was that the board of education
16 would follow through.

17 There were no promises, absolutely no
18 promises, but the board had established a task force
19 earlier in the year to make some recommendations for
20 how best to go forward with governing the station, how
21 best to go forward with operating and managing the
22 station.

23 One of the recommendations was to do what a
24 lot of public radio stations have done, like what I
25 was familiar with down in San Diego at KPBS, to assign

1 oversight and management of the station to an
2 auxiliary organization, like a separately incorporated
3 501(c)(3), to provide the capacity and more direct
4 board direction and oversight of the station. I knew
5 that the board of education -- in San Francisco, their
6 principal priority, their main job is to make sure
7 that there are books in the classroom, that there's
8 enough food in the cafeteria, that the buses run on
9 time.

10 Quite frankly, the station as a management
11 priority is far down on the list, and rightly so. But
12 because of that, the station was kind of left on its
13 own to kind of do what it wanted, and the only time
14 the board ever heard about the station was when
15 something bad happened. So I think the folks who
16 filed the petition and I both kind of wanted to follow
17 up on the task force recommendation to set up a
18 501(c)(3), to directly manage -- I mean, the district
19 would maintain the license, without a doubt.

20 The district was not selling the license.
21 It was more of a property management kind of concept,
22 where the district owns the property but set up an
23 agreement with another company to operate the property
24 or to manage the apartment building, for lack of a
25 better term. The approach the Petitioners took, it

1 was like taking an ice pick to an eye to get a piece
2 of dust out. You know, I wanted to embrace the
3 change. Well, it never happened. But I think they
4 saw the recommendation. They wanted the board to go
5 through with it.

6 They didn't see any activity, at least on
7 the surface. I was working with Enrique and with the
8 superintendent's office to move forward with the
9 recommendation, but politics and reality just got in
10 the way. People didn't want to do it. So I don't
11 know if I'm getting to your question.

12 Q You are. You're doing fine.

13 A So I think that that was likely their
14 motivation. It was angry. They did it in an angry
15 kind of way.

16 (The document referred to was
17 marked for identification as
18 Ramirez Exhibit No. 5.)

19 BY MR. SHOOK:

20 Q Now, but when they finally did get to the
21 point of putting their anger on paper, they leveled a
22 number of charges. Some of them had to do with
23 employment matters. There was a lot of fuss about
24 EEO, which in the end turned out not to go anywhere.
25 But, there were also charges made about how the

1 application questions were answered, and one of them
2 in particular concerned the public file. In that
3 sense, I want to show you at least page 4 of the
4 petition. You can just sort of read through that to
5 get an idea of what --

6 A What section?

7 Q You can read the entire page to yourself.
8 There are certainly other pages that could make this
9 more complete, but I just want to give you a little
10 memory jog in terms of what was going on the time.
11 One of the beauties of having my office not
12 too far away is that if I need to, I can always run
13 back and get the entire petition, but for my purposes
14 right now, I just wanted to show you this page to
15 hopefully bring back in your mind some of what was
16 going on at that time. Along those lines, when the
17 petition to deny arrived, did you actually read
18 through the entire petition? As I said, I can always
19 get it, but I'll describe it generally.

20 MS. REPP: I have it.

21 MR. SHOOK: Okay.

22 THE WITNESS: Yeah, I would have read
23 through it.

24 BY MR. SHOOK:

25 Q There was 20 plus pages of argument and

1 there were exhibits all over the place, as I said,
2 most of it having to do with EEO matters, but do you
3 remember reading through the petition itself?

4 A Should I read it right now?

5 Q No. Please, we'll be here several days.

6 A I do remember reading through it, but it
7 seemed at that time so contentious that I needed to
8 leave it to the attorneys to respond to, because just
9 looking at it, it amounts to a huge distraction from
10 station -- from managing and running the radio
11 station. But in answer to your question, yes, I do
12 remember reading it.

13 Q Then, the page that I gave you, page 4,
14 makes various claims about what you knew and when you
15 knew it relative to the public file. To distill it,
16 if you will, what this is saying is that you knowingly
17 checked a box that you shouldn't have checked, that
18 you should have checked the "no" box instead of the
19 "yes" box. That's what these people are arguing. Did
20 you have that understanding when you read through the
21 petition, that that's what they were charging you
22 with?

23 A Yeah. Yeah. That -- yeah.

24 Q As you've mentioned, knowing what you know
25 now, you recognize that you should have checked the

1 "no" box instead of the "yes" box.

2 A For sure.

3 Q But at the time, your belief was that you
4 would correctly check the "yes" box?

5 A Yeah. I mean, at the time, I was working
6 literally to the best of my knowledge at the time.

7 Q Did your thinking change at all as a result
8 of the arguments made by the Petitioners, that the
9 light bulb went off and it was like maybe I shouldn't
10 have checked the "yes" box, or did you come to that
11 realization only after you started working at CPB and
12 you had to go through the various things that you've
13 described at CPB?

14 A Yes. There was an embarrassing moment of
15 oops, if I had known better I could have done better.
16 Yes, there was a moment of oops. I don't remember if
17 it came out of my reading of this or if it came out of
18 Ernie Sanchez explaining to me what was going on.

19 Q Did you ever share the oops thought with
20 anybody? Other than the people who are here today,
21 had you shared that thought beforehand with anybody?

22 MS. REPP: Could I just add before you
23 answer that we would be claiming the attorney-client
24 privilege with your conversations with Ernie Sanchez?

25 MR. SHOOK: You would be claiming it, but in

1 this instance, we would be disputing that the
2 privilege still exists. We can get into the
3 declaration at a later point where it is actually made
4 in the declaration that there is reliance on counsel's
5 advice. With that as a defense, that constitutes a
6 waiver of the privilege.

7 MS. REPP: I don't disagree in the context
8 of what's in the declaration that that's a specific
9 waiver, but only to the extent that we're talking
10 about what is in the declaration. The statement in
11 the declaration related to what was discussed before
12 the application was signed.

13 MR. SHOOK: I didn't think that was the
14 nature of the question at this point.

15 MS. REPP: Okay. What was the question?

16 MR. SHOOK: That's very good. That's a very
17 good question. I'll have to try to reconstruct it in
18 my mind.

19 BY MR. SHOOK:

20 Q We were referring to the euphemism "oops."
21 That's probably going to be my starting point here,
22 that when you had that oops moment, you've shared that
23 with us today. Had there been an earlier point in
24 time when you shared that oops moment with anybody
25 else?

1 A No.

2 Q So prior to today, there would have been no
3 one that you would have told, gee, I should have
4 checked the "no" box instead of the "yes" box on this
5 application?

6 A I don't know if I'm supposed to answer. No,
7 I wouldn't have. Can you ask the question again?

8 Q Sure. You know, we've been referring to
9 Question 2, Section 3 of the application, which talks
10 about whether documentation has been placed in the
11 public file at the appropriate time, as required by
12 the rule. You've acknowledged that, on the basis of
13 what you've learned as a consequence of being at CPB,
14 you recognize that the question should have been
15 answered in the negative as opposed to "yes."

16 A Correct, and I made a mistake.

17 Q Right. The question at this point is
18 whether you shared that realization with anybody prior
19 to today.

20 A No.

21 Q Now, after reading the allegations that were
22 leveled against you relative to the public file and
23 the certification made in terms of what was in the
24 public file, did you then go back to the public file
25 to take a look at it to see what was there?

1 A I don't remember.

2 Q Do you remember whether you directed anybody
3 to go back to the public file to give you a report in
4 terms of what was there?

5 A No, I don't remember doing that. I don't
6 remember doing that. I don't think I would have done
7 that, because at the time, I would have been sure that
8 I was right, and so I don't think I would have done
9 something like that.

10 Q Now, in terms of being sure that you were
11 right, had you shared your reasoning with anybody in
12 terms of how it was that you came to the "yes" answer?

13 A I don't remember.

14 (The document referred to was
15 marked for identification as
16 Ramirez Exhibit No. 6.)

17 BY MR. SHOOK:

18 Q I'm going to show you another document that
19 has been a bit of a mystery to us, at least. This is
20 from the petition to deny. It's Exhibit BB. First of
21 all, prior to the time you received the petition to
22 deny, did you have any awareness that Exhibit BB
23 existed?

24 A No.

25 Q So I take it that you are not the author of

1 Exhibit BB?

2 A Correct.

3 Q Do you have any idea as to who the author
4 is?

5 A No.

6 Q Now, there's some handwriting that appears
7 on Exhibit BB following point No. 1. The words,
8 "willful false statements" and a portion of the word
9 "and" that preceded it are circled, and then there are
10 a couple of exclamation points drawn out there. Then
11 underneath it has "re maintenance," and it looks like
12 "of public file." Do you have any idea who hand wrote
13 that word in there?

14 A No, I don't.

15 Q Then following point 2, there's a reference
16 to EEO policy, and then it has 5/6, "list hires
17 through any EEO process." Do you have any idea who
18 wrote that?

19 A No, I don't.

20 (The document referred to was
21 marked for identification as
22 Ramirez Exhibit No. 7.)

23 BY MR. SHOOK:

24 Q Now, as a result of the petition to deny,
25 one of the things that happened, at least so far as we

1 can tell, was the preparation of a declaration.

2 MS. REPP: Can I have the petition back?

3 MR. SHOOK: No, we'll just put it in the
4 public file.

5 MS. REPP: I'll keep it out in case we need
6 it.

7 BY MR. SHOOK:

8 Q Now, in terms of this declaration, first of
9 all, it appears to be six pages in length, and on page
10 6 there is an execution date noted and a signature.
11 Could you tell us if that's your handwriting and your
12 signature?

13 A Yes, it is.

14 Q Now, could you tell us how it was this
15 declaration came to be put together?

16 A I remember having a telephone conversation,
17 or doing this by telephone with a lawyer who worked in
18 Ernie Sanchez's office, Susan -- I can't remember her
19 last name.

20 Q So it wasn't Ernie himself?

21 A Correct.

22 Q Basically, as a result of your conversation
23 with this individual, this declaration came to appear?

24 A Correct.

25 Q So I take it that you weren't the person who

1 actually did all the typing that resulted in this
2 declaration. That was somebody else?

3 A Yes.

4 Q From the time that the declaration as we
5 have it appeared to the time you signed it,
6 approximately what period of time are we talking
7 about? Weeks, days, hours?

8 A I missed the first half of your question.

9 Q We have this six page document that bears
10 your signature. From the time that you got something
11 akin to this, if not this exactly, until you signed
12 it, approximately how much time transpired?

13 A I don't remember.

14 Q Do you recall from what it was that you
15 first received what changes, if any, you may have made
16 to the document?

17 A I don't remember making any changes.

18 Q I would like to direct your attention
19 initially to page 3, paragraph 9. If you could just
20 read that to yourself. Now, some of this ground we've
21 already covered in various questions, but I want to do
22 it now in the context of this declaration. There's a
23 reference here to a meeting with Dave Evans that we
24 had talked about. Apparently, that meeting took place
25 sometime in August 1996, which would have been, I

1 guess, very shortly after you became the general
2 manager.

3 A Correct.

4 Q As a result of this meeting with Mr. Evans,
5 did you have some kind of understanding that at least
6 in his opinion the public file was deficient in some
7 way?

8 A I do recall him bringing it up, but it
9 really didn't -- it didn't stick in my mind, because
10 my preoccupation at the time was with getting ready
11 for constructing the station and then getting ready
12 for the move. I think that this meeting that I had
13 with Dave was primarily about that. This would have
14 been something that Dave would have said as an
15 afterthought or as a "and, you should know this," but
16 really, my attention, my focus, was on what do we need
17 to get ready for the station move.

18 Q I think that we had talked about that as a
19 result of this conversation with Dave Evans that that
20 did not immediately trigger some kind of look at the
21 public file at that point.

22 A Correct. I think it was a combination of
23 getting the renewal notice and then looking into what
24 activities I would need to conduct to complete that
25 process, that the ball really got rolling on making

1 sure that everything was complete and conformed to the
2 way things needed to conform to.

3 Q So in other words, as a result of the
4 conversation with Mr. Evans, that did not trigger a
5 look at the public file at that point?

6 A Yeah, to the best of my memory. Correct.

7 Q That conversation would not have been the
8 cause for you ultimately to have looked at the public
9 file.

10 A Correct.

11 Q Now, moving up to page 4, paragraph 10, if
12 you could read paragraph 10 to yourself. Now, in
13 terms of paragraph 10, the first sentence speaks in
14 terms of your having assigned Ms. Hecht the task of
15 reviewing the file. Does this help bring to mind
16 whatever it was that you had wanted her to do, whether
17 reviewing the file consisted solely of simply telling
18 you what was in there or whether reviewing the file
19 consisted of something more than that?

20 A I don't remember. I imagine that it
21 wouldn't have been something more than reviewing the
22 file, because in her voluntary status, I don't think I
23 would have assigned any greater responsibility to her
24 than that.

25 Q In common parlance, in terms of what I

1 understand reviewing the file to mean, it would
2 basically be look to see what's there and tell me
3 what's there. Would that be an accurate
4 understanding? Is that putting too fine a point on it
5 at this stage?

6 A Yeah. Given the passage of time, I'm
7 reluctant to say that that's what I intended for her
8 to do at the time.

9 Q The second sentence reads that you did not
10 consider the list that she produced to be accurate.
11 Was there something that you had in mind then in terms
12 of what it was that was inaccurate about it? In
13 looking through this, I'm hard pressed to figure out
14 what you might have been thinking of in terms of what
15 made it inaccurate, so if there's something that you
16 can recall, that would be helpful.

17 A Again, I don't remember that what she gave
18 me is what I asked for, so I wasn't expecting a list.
19 It's not what I was expecting. So what she gave me
20 was a typewritten letter -- or a typewritten list --
21 with a lot of typos on it, a lot of strikeouts, not
22 giving me a great degree of confidence in how accurate
23 it was. Again, this is at a point of time in the
24 station where I began to suspect, or I began to think
25 to myself I don't know who to trust, I don't know what

1 to believe. In other words, I don't know what to
2 believe.

3 Q Now, where did Susan Hecht fit into this?
4 She's a volunteer, which I guess means she didn't get
5 paid to do whatever it was that she was doing. Right?

6 A Correct.

7 Q So she wasn't, I guess, a formal employee of
8 the school system?

9 A Correct.

10 Q So she was somebody who came basically when
11 she was able to and did whatever it was that she was
12 asked to do?

13 A Yeah. I remember that mainly what she did
14 was staff the "reception desk" right near the front
15 door.

16 Q So that was the person who would, what, just
17 take random phone calls and redirect them?

18 A Took the phone calls, let folks in the front
19 door when they buzzed in. The term "volunteer" at
20 KALW takes on a greater dimension than I think it does
21 at most --

22 Q Are we talking about heart and soul? You
23 know, somebody is there because they're committed to
24 the station in some fashion?

25 A We're talking volunteer -- for instance,

1 even some of the full-time employees who worked full-
2 time shifts during the week Monday through Friday and
3 then hosted music programs, like a folk music program
4 on the weekend, when they came in for that work, they
5 considered themselves volunteers. This is kind of one
6 of these things that's not a concept, but they took
7 advantage of the opportunity to move between well, I'm
8 a volunteer today, I'm talking to you as a volunteer,
9 or you can't tell me what to do, I'm on volunteer time
10 right now.

11 It just was frustrating to deal with people
12 who thought in those terms. I bet if you look at the
13 station's program guide today and look at the --
14 because this is how it was back when I was at the
15 station, I can't imagine that would have changed. If
16 you look at the staff listing at the back page of the
17 program guide, if that's where it still is, you'll see
18 a listing of staff members. Below that, you'll
19 probably see a listing of volunteers, and you'll see a
20 lot of overlap, someone listed in both places.

21 These are volunteers. Remember, this is
22 also happening in San Francisco, in the Bay area,
23 where, at least in the public radio industry one of
24 the stories that we tell is about the time at the
25 Pacifica-owned and operated station out in Berkeley,

1 where a volunteer producer who was hosting a program
2 passed away. In their will, they willed their time on
3 the air at the Pacifica station to another volunteer,
4 because that was how -- I can get into Bay area public
5 radio culture and some more, but I just wanted --

6 Q That gives us a flavor.

7 A -- to put a footnote on volunteer takes on a
8 greater dimension at KALV.

9 Q Then the second part of that sentence makes
10 a reference to that, "She may have misunderstood my
11 directions when she worked on this assignment." Does
12 this trigger any memory as to what specific directions
13 it was that you may have given her?

14 A No. The only thing I remember about this is
15 what she provided went way beyond my expectations. I
16 can only imagine what I asked her to do, which could
17 have been Susan, there's the public file, would you
18 pick it up and put it in some kind of order and bring
19 it into my office so I can go through it. But I can't
20 remember with a certainty what I asked her to do.

21 Q Now, to do what she did, considering the
22 number of file folders that were there, it probably
23 took her a week, two weeks, three weeks?

24 A Certainly, it would have taken a great deal
25 of time to go through the public file, because there

1 was a lot in there. Yeah.

2 Q Now, in getting that report back from her
3 and looking at the public file yourself, did it ever
4 occur to you that there were perhaps a lot of
5 documents in that file that just shouldn't have been
6 there? Public file, open it up and put something in,
7 and it just mushroomed to the point where?

8 A Sure. I thin one of the things that I
9 remember doing is looking for documents, guidance
10 documents or resources that would be helpful in
11 helping me to better understand what needs to be in
12 there, what doesn't need to be in there, and I'm
13 attracted to headlines. There was an NAB memo about
14 the public file. Its headline -- I remember this.
15 Its headline was what to keep, what to toss. I mean I
16 was very attracted to that. I can remember using that
17 as a resource. I don't remember tossing anything,
18 because I'm always afraid to toss, but I am mindful of
19 knowing what to keep, yeah, and recognizing such.

20 Q That happens to trigger some other things,
21 so we're going to take a slight diversion here. One
22 of the things that the school district did for us was
23 that it provided us with various reference manuals.

24 MS. REPP: May I ask for a break?

25 MR. SHOOK: Sure.

1 MS. REPP: Do you have facilities on this
2 floor?

3 MR. SHOOK: Yes, we do.

4 MS. LEAVITT: Yes, we do. I'll take you out
5 because they're locked. There on the other side of
6 the locked door.

7 MR. SHOOK: We can be off the record here.

8 (Whereupon, at 1:05 p.m., the deposition in
9 the above-entitled matter was recessed, to reconvene
10 at 1:45 p.m. this same day, Tuesday, November 9,
11 2004.)

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A F T E R N O O N S E S S I O N

(1:50 p.m.)

Whereupon,

JEFFREY RAMIREZ

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

FURTHER EXAMINATION BY COUNSEL FOR THE COMMISSION

(The document referred to was marked for identification as Ramirez Exhibit No. 8.)

BY MR. SHOOK:

Q I believe we had just discussed paragraph 10 of your declaration. I think it had come up that there were some documents that you had reviewed beforehand in connection with the preparation of the renewal application. We received some documents from the San Francisco Unified School District, and I want to show a number of them to you and see whether or not any of them were documents that you had seen.

The first document that I'm handing you is fairly substantial. It has on the bottom of it SFUSD-00001, and it goes to 00082, so there are 82 pages of this. It bears the title, The Public Radio Legal Handbook. If you would just glance through it. I

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1 don't expect you to read it and memorize it all. Now,
2 is this a document that you saw beforehand or a type
3 of document that you saw before you filled out the
4 renewal application?

5 A Yeah, this looks like the legal handbook
6 that the National Federation of Community Broadcasters
7 provides to stations to help them understand legal
8 things.

9 Q So this is a document that you would have
10 looked at from beginning to end? What is it about
11 this document that you would have looked at, if
12 anything?

13 A I had this document. It was a binder in my
14 office at KALW. I would have referred to this book
15 because in my mind, I would have considered the
16 license renewal application a legal thing, so I would
17 have referred to this guidebook, this handbook.

18 Q Well, one of the things that's in there,
19 first off, is a station operation's checklist. Is
20 this something that you remember reading?

21 A I don't remember reading this section. The
22 sections that I remember referring to are the ones
23 that as part of their headline or the chapter heading
24 involved the FCC.

25 Q I'm referring now to page 5 and also to page

1 6 in terms of how they're marked with SFUSD. Under
2 Heading 3, it reads Local Public File. There are a
3 number of things here on the pages that we're looking
4 at, page 5 and also the carryover to the next page,
5 page 6. Is this material that you had referred to?

6 A I don't remember referring to this list, to
7 this checkoff list.

8 Q The next thing that I want to show you, it's
9 on page 15, Heading 2, Regular Filings and Reports.
10 The first paragraph I have clipped here is the second
11 one. If you could just read this page to yourself and
12 then tell me whether this was something that you had
13 looked at.

14 A This doesn't look familiar.

15 Q Then the next page talks about a number of
16 reports, the next page being page 16 in terms of SFUSD
17 stamping. In the middle of it, it refers to an
18 ownership report. Did you read the section relative
19 to the ownership report prior to filling out the
20 renewal application?

21 A This doesn't look familiar either.

22 Q I'm going to jump ahead to page 18. The
23 heading reads About Forms and Filings. There is
24 another heading a little bit smaller down below that
25 that reads Public File Requirements. If you could

1 read that paragraph to yourself and then tell me
2 whether or not you had read this prior to filling out
3 the renewal application.

4 A I may not have.

5 Q Moving to page 21, there's a heading called
6 Ownership. If you could read the first paragraph to
7 yourself and tell me whether or not you had looked at
8 this prior to filling out the renewal application.

9 A I don't remember reading that.

10 Q Next page, 22, again under the heading
11 Ownership Report toward the bottom, the very last
12 paragraph on that page. Read that to yourself,
13 please.

14 A I don't remember reading that.

15 Q Page 25, the heading -- it's fairly small --
16 The Issue of Timing. Could you read that to yourself
17 and then tell me whether you had read this prior to
18 filling out the renewal application?

19 A No, I don't remember that.

20 Q Up to page 46, the heading reads Program
21 Recordkeeping, and then there's another heading a
22 little bit smaller underneath that that says Required
23 Records. Then down at the bottom of the page, the
24 heading again, which is smaller still, reads Problems
25 Programs List. That paragraph carries over to page

1 47, so if you could read that paragraph to yourself.
2 The question is the same, whether or not you had read
3 that prior to filling out the renewal application.

4 A This section does look familiar. I don't
5 remember if what I'm reading here about the issues
6 list is from this section or from another part of the
7 book.

8 Q What is it that looks familiar to you?

9 A That it discusses that stations have to
10 place in its public file a quarterly list of issues
11 that the station covered in its programming for that
12 period of time.

13 Q And you don't remember whether it was this
14 particular paragraph or something that perhaps we'll
15 come to as we go through?

16 A Correct.

17 Q Very good. Now, we're up to page 52. The
18 large heading toward the bottom reads What Must be in
19 the Public File. The second paragraph is the one that
20 I have clipped, so if you could read that paragraph to
21 yourself and tell me whether or not you had read that
22 prior to filling out the renewal application.

23 A I don't think so. Let me see. It does --

24 Q Yes, I guess it does.

25 A Just looking at this section here, it does

1 look familiar. Yeah, this section does look familiar.

2 Q What is it in particular that strikes you as
3 familiar?

4 A It's like I remember reading it before.

5 Q Does any sentence or phrase, anything stand
6 out in your mind as something that you had read?

7 A The headline stands out What Must be in the
8 Public File. The way that it's organized, it's easy
9 to read. It's easy to scan.

10 Q You had mentioned that you had looked at the
11 public file about the time the renewal application was
12 being prepared. Did you have this handbook to refer
13 to so that you could look and see, okay, this is what
14 the handbook says is supposed to be in the public
15 file, and this is what I have? How did this process
16 work?

17 A I don't remember the process. I don't
18 specifically remember referring -- an act of having
19 the binder here and then having the file here. This
20 book lived on a shelf in my office. My recollection
21 of reading or referring to the book is me reaching
22 over and grabbing the book, opening it up in front of
23 me, and then referring to the sections that I thought
24 were the ones that directly related to the work
25 activity that I was conducting at the time, which was

1 to find out what needed to be in the public file.

2 Q But then you would have to go physically
3 someplace else to actually look at the public file to
4 see what was there?

5 A Right. The public file was located out the
6 door and down the hall in the open space, toward the
7 rear of the open space there at the radio station.

8 Q So after you would look at the binder you
9 would then get up and go down the hall and look at the
10 public file, or how did that work?

11 A My memory is I referred to the binder there
12 in my office. It was the other document, the NAB
13 document, that was more limited in scope. It was
14 literally a two or three page document. This document
15 is pretty big. It was a binder about that thick.

16 Q So the document that you're thinking of is
17 not only the document we're looking at, but there was
18 a good deal more? This document I'm showing you, I
19 think there was 82 pages to it, and when you make
20 reference to the binder and that it was fairly
21 sizeable, are we talking about something that has a
22 lot more than 82 pages in it?

23 A I'm not sure if I'm following. This
24 information was located in a green binder. There were
25 other resource materials that I had available. One

1 was a memo from the NAB that was -- it had a similar
2 listing as what's listed here and it was really easy
3 to read. Actually, it was the one that was with the
4 headline what you need to keep, what you need to toss.

5 MS. REPP: May I interject that this is an
6 excerpt that was produced here from what is a green
7 binder about an inch and a half to two inches wide.

8 MR. SHOOK: I may not have what you're
9 thinking of.

10 MS. REPP: This?

11 THE WITNESS: That looks really familiar.

12 BY MR. SHOOK:

13 Q This has SFUSD-271 through 276. I'm going
14 to shortcut this a little bit. On the top it has
15 typed in here Dated Material, for Historical Purposes
16 Only. If you look through this, there are references
17 that would suggest that this document was not the
18 document that you would have seen if you would have
19 seen if you had looked at something prior to preparing
20 the renewal application, because the timing of this is
21 a little bit after that.

22 A What I remember about this is that the
23 formatting, the headline, again the simple, easy-to-
24 read and scan, the way it's laid out. It looks very
25 familiar to me.

1 Q So this is a document similar to the one
2 that you had looked at when you were referencing what
3 it was that you were to do with the renewal
4 application, and more particularly, what it was that
5 needed to be in the public file?

6 A Correct.

7 Q For example, with respect to looking at
8 what's marked as SFUSD-272, the second box makes
9 reference to quarterly issues programs lists. Then it
10 talks about the retention period. Apparently, the
11 retention period for this is the term of license, so
12 it would have been eight years. In other words, there
13 could have been, depending on how long the license had
14 been held, an awful lot of reports. Is that something
15 that you remember looking at prior to filling out the
16 renewal application?

17 A I'm not sure if I understood your question.

18 Q Well, one of the things that you mentioned
19 when you were talking about was your understanding of
20 what was supposed to be in the public file relative to
21 issues programs lists, and that understanding, if I
22 remember right, seems to be a little bit different
23 than what this box is talking about. You were talking
24 about, if I remember right, that the issues programs
25 lists that you had to be concerned about were those

1 for programs that ran during your tenure as general
2 manager. Am I remembering what you said correctly, or
3 did you not?

4 A I thought I was responsible for making sure
5 that the file was complete, meaning that for the
6 programs that covered issues that were of public
7 interest for the time that I was general manager and
8 for the time before I was general manager.

9 Q All the way back to the beginning of the
10 license term?

11 A Correct.

12 Q So you understood that the requirement was
13 for the license term and not just for the period of
14 time when you were general manager?

15 A Correct, but that during the time that I was
16 general manager I undertook activities to make sure
17 that the file was complete for the license term by
18 going to the producers and asking them to put into the
19 public file the lists for the years before.

20 Q You had mentioned John Covell as one
21 producer. Would there have been other producers that
22 you would have approached?

23 A There could have been. I don't remember
24 exactly.

25 Q You remember Covell?

1 A Yeah, I remember Covell, because he was good
2 to work with. He was on the ball, easy to work with,
3 very cooperative. There were other programs that the
4 station had on the air that also covered issues that
5 were in the public interest, like we had a legal
6 program on where Chuck Finney, an attorney, would go
7 on the air and take telephone calls from listeners.

8 Q I think it was called Your Legal Rights?

9 A Yeah. We had another program called Work
10 with Marty Nemko, a call-in program that we actually
11 started after I got to the station. It was a new
12 program where he took listener calls about workplace
13 issues. I don't have a distinct recollection of
14 working with those producers, to put their lists into
15 the public file.

16 Q So Covell, you remember asking the legal
17 person whose name just slipped by me. His name was
18 again? Chuck Finney?

19 A Chuck Finney.

20 Q You don't remember speaking with him?

21 A No, I don't. I really don't remember.

22 Q And Marty Nemko, you don't remember speaking
23 with him and asking him to prepare lists?

24 A No, I don't remember.

25 Q Other than Covell and Finney and Nemko, were

1 there other producers that you would have or could
2 have approached and asked them about preparation of
3 public file material?

4 A Yeah. We had a local program, a local
5 produced program that aired in the middle of the day
6 or right after Fresh Air I think. It was called Open
7 Air. That program was hosted by Alan Farley and by
8 Michael Johnson, and they would regularly bring in
9 people to interview. That's one of the programs I
10 remember. I'd have to have a schedule in front of me
11 to look at the other programs.

12 Q Did you ever prepare or have you prepared
13 issues programs lists relative to NPR programming?

14 A I don't remember.

15 Q Now, the next page that I have clipped is
16 SFUSD-273, and the portion that I have clipped refers
17 to annual ownership reports and ownership-related
18 documents. Do you recall reading that and then taking
19 any steps prior to completing the renewal application
20 in terms of putting ownership material in the file?

21 A I know that I attached to the renewal
22 application form an ownership form. I don't think it
23 was a report. It was a form where we listed -- where
24 I listed -- the station's ownership, you know, the
25 school district and then the board members. I think

1 there was some other information on there related to
2 contracts or relationships that the station has or the
3 school district has with other organizations. That's
4 what I remember relating to that.

5 Q Now, at the bottom of SFUSD-274 and carrying
6 over to the top of SFUSD-275, there is a little
7 paragraph about quarterly issues programs lists.
8 Could you read that to yourself, please, and then tell
9 me whether this was something that you had read prior
10 to completing the renewal application?

11 A I don't remember reading this, though given
12 that I had this document in front of me, I must have
13 read that.

14 Q But you don't remember right now?

15 A Right.

16 Q Going back to what would have been in the
17 big green binder, at page SFUSD-55, the second
18 paragraph on that page refers to problems programs
19 list. If you could read that paragraph to yourself
20 and the two paragraphs that follow. Were these
21 paragraphs that you had read prior to filling out the
22 renewal application?

23 A You know, I don't remember specifically
24 reading this paragraph, but given that I used this as
25 a resource, then I would have read that.

1 Q Moving to the next page, the SFUSD-56,
2 underneath Period of Retention for Ownership
3 Information, it speaks in terms of how long such
4 material needs to be in the public file. Did you read
5 through that prior to filling out the renewal
6 application?

7 A I don't remember reading through this period
8 of retention section.

9 Q Then this particular section reads Top
10 Priority Items for the File. It begins on SFUSD-57
11 and carries over to page 58. The portion that I have
12 clipped concerns ownership documents. Is this
13 something that you had read prior to filling out the
14 renewal application?

15 A I don't remember reading this section
16 either.

17 Q I'm going to jump back to the declaration
18 that we had been talking about before we broke for
19 lunch. This time I'd like you to read through
20 paragraphs 11 and 12, and then I'll ask some questions
21 about those. Now, with respect to paragraph 11, we've
22 talked at length about how this was the first renewal
23 application that you had to fill out and that all of
24 this process was relatively new to you.

25 The third sentence of paragraph 11 speaks in

1 terms of, "My understanding of what information was
2 required to be required and certified was not
3 complete, and I believe I may have misunderstood what
4 was required in completing Section 3, Questions 1, 2
5 and 3." Can you step back in time and try to
6 reconstruct for us what it was you think you may have
7 misunderstood, especially with respect to Question 2?

8 A What was Question 2?

9 Q Question 2 was about what was to be in the
10 public file and whether it had been placed there at
11 the appropriate times as required by the rule.

12 A So what was the question?

13 Q If you could step back in time, you make
14 reference there that you may have misunderstood what
15 was required to be there. At the time you signed this
16 declaration, what understanding did you have in terms
17 of what was supposed to be there?

18 A I think in my mind what -- I think
19 conceptually in my mind, my understanding was that the
20 station needed to convey in its public files a sense
21 that it was providing programming as a service that
22 covered issues that were in the public interest. So
23 when I approached the producers and asked them to put
24 into the public file a record of the programs that
25 we've produced that show that we have been producing

1 programming that covered issues that were of
2 importance to the community we serve, that was the
3 concept that I had in my mind.

4 The other concept was, whoa, this stuff
5 isn't in the file, we need to make it complete. I was
6 working very quickly, too, you know, given that there
7 were other priorities at the station. One, we needed
8 to increase our listenership and increase the portion
9 of our funding that didn't come from the federal
10 government as quickly as possible, because the year
11 that I got to the station the Corporation for Public
12 Broadcasting had just put in place new criteria to
13 continue to receive federal funding.

14 So I was spending a lot of my time making
15 programming changes, figuring out how to raise more
16 money, working the bugs out of the station move, so I
17 was working very quickly at the time and as best as I
18 could, working with the concepts that I understood.
19 So I think that in my mind, that was the understanding
20 that I had.

21 Q You mentioned today that you now realize
22 that the box that you should have checked was the "no"
23 box instead of the "yes" box with respect to Question
24 2. Is it so that that understanding only came after
25 you left KALW's employ?

1 A Yeah, because I believed that I was right
2 when I filled out the application.

3 Q Now, moving on to paragraph 12, the very
4 first sentence reads, "With respect to the response to
5 your Question III(2), I had conferred with
6 communications counsel regarding what was required to
7 be in the public files and with respect to response to
8 this question." Which communications counsel had you
9 spoken with conferred with?

10 A Our FCC attorney at the time was Ernie
11 Sanchez.

12 Q Is he the person being referred to here?

13 A I don't remember. I don't remember if he's
14 the person I'm referring to there, but he would have
15 been the only counsel that I would have referred to.
16 I don't remember, but it would have -- it could have
17 only been Ernie that I'm referring to in that
18 sentence.

19 Q Well, there was this other person, Susan
20 Jenkins I think her name was. Her name also appeared
21 on pleadings, but I guess she was, what, an associate
22 of his?

23 A Yes, Susan worked in Ernie's office, so when
24 I refer to Ernie Sanchez, I mean the law firm of Ernie
25 Sanchez that --

1 Q Sort of like the royal "we"?

2 A The law office of Ernie Sanchez, to my
3 understanding, was the station's FCC attorney. The
4 other thing, not having any experience working with
5 attorneys, especially in this respect, again it was an
6 area where I didn't know what I was doing.

7 Q Well, I guess one way of putting it is you
8 would be saying that you didn't even know which
9 questions to ask of the counsel in order to get an
10 answer that would have been useful?

11 A Correct.

12 Q In the process of filling out the renewal
13 application, was this your first contact with the law
14 office of Mr. Sanchez?

15 A I don't remember if this was the first
16 contact, because we were also working on another
17 project that was related to assigning governance of
18 the station to a 501(c)(3), and Ernie was involved.
19 Again, this is something I have to refer back in time.
20 This is something that I think Enrique Palacios had
21 started working on with Ernie to file the papers to
22 incorporate a 501(c)(3), that if the recommendation to
23 transfer oversight and management to a separate entity
24 were to take place, Ernie was the one taking care of
25 -- I think the term is "incorporation papers."

1 Q This is related to that task force
2 recommendation that has been talked about a little
3 bit?

4 A Correct.

5 Q Conceivably, you had some contact with Mr.
6 Sanchez or his associate in connection with the task
7 force recommendation, and that would have been
8 separate from any contact that you had with him or his
9 associate with respect to the renewal application?

10 A Correct.

11 Q With respect to paragraph 12, that first
12 sentence, do you remember what it was that you had
13 conferred with communications counsel about? It
14 appears there are two aspects here. One is what was
15 actually supposed to be in the public file, and then
16 the second part of it was how to answer the renewal
17 application question. So if we could break that out
18 into two parts, the first being what conferring did
19 you do with respect to what was required to be in the
20 public files?

21 A I can only imagine that my first question to
22 Ernie would have been, so I've received this notice to
23 renew our FCC license, what am I supposed to do. I
24 can remember that I didn't have very many -- I tried
25 to limit the number of conversations I was having with

1 the attorney, because at the same time, the station
2 had to pay its own bills, and I was trying to raise
3 the funding so that we could continue to receive our
4 federal funds. I was very cost conscious, in knowing
5 that every time I --

6 Q We do that, don't we, every time you pick up
7 the phone.

8 A I was very cognizant of that. Again, I
9 think this is an area where not knowing how heavily I
10 needed to rely on counsel's advice, I tried to do
11 everything on my own.

12 Q So in terms of conferring with
13 communications counsel regarding what was required to
14 be in the public files, do you have any recollection
15 at all as to what information you may have received
16 relative to what was supposed to be in the public
17 files?

18 A I can't remember anything except that prior
19 to submitting the application as completed to the FCC,
20 I did ask Ernie to take a look at it before I sent it.
21 That's really the only distinct memory I have of
22 working with Ernie on the application.

23 Q But this sentence was drafted as it was, I
24 take it, because there had been a conferral of some
25 kind.

1 A Yeah. I can read that. I just don't
2 remember what it was.

3 Q The next sentence reads, "I relied upon my
4 understanding of the advice of counsel, the counsel
5 memorandum on this subject, published by the National
6 Association of Broadcasters, and my knowledge of the
7 files maintained by KALW in responding 'yes' to this
8 question." Do you recall what advice you received
9 from counsel on that that's being referred to in that
10 sentence?

11 A No, I don't.

12 Q Do you recall having a conversation with
13 anyone around the time the renewal application was
14 prepared what the consequences would have been if a
15 "no" answer would have been provided to the Question 2
16 in Section 3 that we have been talking about?

17 A No, I don't recall that.

18 Q Now, reading on in paragraph 12, "At the
19 time I made that response" -- referring back to the
20 "yes" response -- "I believed that Ms. Hecht's
21 assessment of the public inspection file was
22 inaccurate and confused, and I did not recall any
23 prior conversation I may have had with Mr. Evans on
24 the subject. I also believed that I had fully
25 accounted for all public issues programs during my

1 tenure as general manager in the document which
2 Petitioner has labeled 'Exhibit O,' which is what I
3 believed was called for by the question and the rule."

4 Now, Exhibit O was something that we had
5 looked at in this stack of papers, and it consists of
6 dates beginning June 5, 1995, so that would have been
7 approximately one year before you became general
8 manager, or maybe a little bit more than a year. It
9 pertains to one program, that being City Visions.
10 Correct?

11 A Yes.

12 Q Your understanding at the time you signed
13 this declaration was that this Exhibit O was all that
14 the FCC rules required in terms of quarterly lists for
15 purposes of the renewal application Question III(2)?

16 A Yeah, with some explanation. The concepts I
17 was dealing with were we needed to show in the public
18 file a sense that we were covering issues that were of
19 importance to the community, so I asked the producers
20 to create the list to put into the file to make it
21 complete. As I look at this exhibit, I don't think
22 that I would have believed that the file was complete
23 based on this list here, because it starts with 1995.

24 Q As opposed to going back to 1991, when the
25 license term started?

1 A Correct.

2 Q So that's one problem with this list.

3 A Correct.

4 Q A second problem would be that it covers a
5 two year plus period and it was prepared all at once,
6 as opposed to prepared quarterly and broken out. Do
7 you know what I'm talking about there?

8 A Yeah, I think I know what you're talking
9 about.

10 Q The rule refers to a list being prepared
11 quarterly, every three months, so obviously, this list
12 didn't meet that requirement.

13 A Yeah, but when I got to the station the file
14 didn't include this information. I needed to correct
15 the fact that it wasn't there to make the file
16 complete by creating a list. I think I understand
17 what you're saying, that it's not organized by
18 quarter.

19 Q That's just one thing that sort of jumps
20 out.

21 A Yeah, because it was generated all at one
22 time, and I see that that's wrong now.

23 Q When paragraph 12 was put together and you
24 were stating that your understanding was that Exhibit
25 O was sufficient because of the various things that

1 are mentioned here, did you have a conversation with
2 anybody where it was pointed out to you that that just
3 couldn't possibly satisfy the FCC's rules?

4 A I don't remember having any kind of
5 conversation.

6 (The document referred to was
7 marked for identification as
8 Ramirez Exhibit No. 9.)

9 BY MR. SHOOK:

10 Q Now, I want to show you another declaration.
11 This is not one that you did. This is one from Mr.
12 Helgeson. The two paragraphs that I want you to focus
13 are on paragraphs 3 and 4. If you could just read
14 those to yourself, and then I'll ask you a question or
15 two about them. First of all, with respect to
16 paragraph 3, did Mr. Helgeson have responsibility for
17 maintaining that four drawer file cabinet?

18 A Yeah, Bill had responsibility for the
19 cabinet because it was in his area. I don't know who
20 else was responsible for the filing cabinet.

21 Q So it's conceivable that somebody in
22 addition to Mr. Helgeson had responsibility for the
23 contents of the cabinet?

24 A Is it conceivable? No, it's not
25 conceivable. It was Bill's filing. See, I call it

1 -- it was Bill's filing cabinet by virtue of the fact
2 that it was the one next to his desk.

3 Q But you didn't take it upon yourself to have
4 any responsibility for that file cabinet? In your
5 mind, that wasn't your job to take care of that file
6 cabinet?

7 A Correct.

8 Q Had you specifically assigned him the
9 responsibility for taking care of that, or was it
10 something that happened essentially by default, that
11 because the file cabinet was next to his desk, that's
12 his responsibility?

13 A It was the latter, by default. I didn't
14 assign Bill the responsibility for maintaining the
15 filing cabinet. That's the way it was when I got to
16 the station.

17 Q Moving on to paragraph 4, the one sentence
18 paragraph. He states that he's aware of and has
19 assisted with an ongoing affirmative effort since the
20 arrival of Jeffrey Ramirez as general manager to
21 update and maintain the station's public inspection
22 file. Is that an accurate statement, an ongoing
23 effort since your arrival?

24 A I can't say that it's accurate, because I
25 didn't understand the responsibility of maintaining

1 the public file or what had to be in there from later
2 on.

3 Q From what you've told us, you really didn't
4 know that there was anything that had to be done
5 relative to the public file until essentially the
6 renewal application material showed up, and one of the
7 questions was have the documents been placed in the
8 public file that were supposed to be placed there at
9 the appropriate times. As I understood your
10 testimony, it was at that point that you understood
11 that there (a) was a public file and (b) there was
12 something that you had to do about it.

13 A Yeah, that's correct. In my approach to
14 working at the station, it was one big project at a
15 time. The first big project, get the station moved,
16 get it settled. The next project I don't think was
17 the license renewal. The next project was working
18 with the -- I can remember working with the principal
19 of the high school to find out some way or to -- I
20 didn't always have the impression that she welcomed
21 the fact that the station was put into her high
22 school, so I had to work out the working arrangements
23 between who parked where out in the parking lot,
24 because we shared the parking lot.

25 Things like -- the school bell was located

1 right outside in the hallway, and, gosh darn it, the
2 school bell happens to go off at the top of the school
3 bell when the mike's open. Then there were the other
4 priorities of we had to make changes and undertake
5 work activities to make sure that we were meeting the
6 minimum criteria to continue to receive federal
7 funding. Those really were the things that were on my
8 mind and consuming most of my time.

9 You know, it sounds like I was really put in
10 the position of not managing strategically but really
11 managing by response or managing by reacting to
12 whatever fire truck I had to be on that day.

13 Q I think we call it crisis management. It's
14 something that we do in our lives all the time, I'm
15 afraid. Did you ever have any conversation with Mr.
16 Helgeson in terms of what responsibilities, if any, he
17 had in terms of the public file?

18 A I can't remember anything.

19 Q Do you have any knowledge as to who drafted
20 Mr. Helgeson's declaration?

21 A No. I don't know. I can only assume -- it
22 looks like it's in the same format as mine, so it
23 would have been the same -- so I imagine it would have
24 been done in the same manner.

25 Q Basically, you don't know, and it's

1 perfectly acceptable to say you don't know.

2 A Okay. Yeah, I don't know.

3 Q I think you've indicated that it was shortly
4 after these declarations that you left the employ of
5 San Francisco Unified School District?

6 A Correct, in January 1998.

7 Q So I guess it would have been within days of
8 signing your declaration, since your declaration, I
9 think, was signed January 17. If you look at page 6,
10 it will show you when you executed it.

11 A I'll accept that.

12 Q So your leaving would have been almost
13 within days after signing this?

14 A Yeah. I remember my last day was
15 January 30.

16 Q Since leaving the employ of the San
17 Francisco Unified School District, have you spoken to
18 anyone about the KALW public inspection file?

19 A In working backward in time, in July of this
20 year, Ernie gave me a courtesy call to let me know
21 that the FCC notice of hearing had been released.
22 Prior to that time, I don't remember having any
23 conversations.

24 Q Since leaving the employ of the San
25 Francisco Unified School District, have you spoken to

1 anyone about the issues programs lists for KALW?

2 A No.

3 Q Since leaving the employ of the San
4 Francisco Unified School District, have you spoken to
5 anyone about ownership reports or supplemental
6 ownership reports for the San Francisco Unified School
7 District?

8 A No.

9 Q I think I've already asked this, but in case
10 I haven't, since leaving the employ of the San
11 Francisco Unified School District, have you spoken to
12 anyone about the certification to the renewal
13 application?

14 A No.

15 (The document referred to was
16 marked for identification as
17 Ramirez Exhibit No. 10.)

18 BY MR. SHOOK:

19 Q The next document I'm going to show you is a
20 letter that was sent by the staff of the FCC back in
21 February 2001.

22 A Should I read it?

23 Q Just to yourself. You can skip it, because
24 if it's something that you haven't seen before, that
25 should be fairly apparent.